

Disciplinary and Other NASD Actions

REPORTED FOR DECEMBER

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this Notice is current as of the end of October 2003.

Firm Expelled, Individual Sanctioned

U.S. Rica Financial, Inc. (CRD #38742, San Jose, California) and Vinh Huu Nguyen (CRD #2374393, Registered Principal, San Jose, California). The firm was expelled from NASD membership and fined \$120,000, jointly and severally with Nguyen. Nguyen was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through Nguyen, made fraudulent representations to customers on the firm's Web site and on trade confirmations, stating that the firm executed agency trades and charged commissions in accordance with a published commission schedule or for "free" when, in fact, the respondent effected customer trades on a riskless principal basis through the firm's proprietary account and charged customers undisclosed markups and markdowns and thereby earned "secret profits." In addition, the firm, acting through Nguyen, failed to maintain memoranda of brokerage orders reflecting time of entry and time of execution of purchases of securities from other broker/dealers into the firm's inventory account and sales of securities to other broker/dealers from the firm's inventory account. (NASD Case #C0100003)

Firm Fined, Individuals Sanctioned

Newbridge Securities Corporation (CRD #104065, Ft. Lauderdale, Florida), Scott Howard Goldstein (CRD #1630008, Registered Principal, Delray Beach, Florida), and James Lee Phelps (CRD #1725995, Registered Principal, Coconut Creek, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$60,000, and required to hire an outside consultant to review and make recommendations concerning the adequacy of the firm's current policies and procedures as they relate to its sales practices and supervisory system. Goldstein was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Phelps was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Goldstein and Phelps, failed to supervise its registered representatives adequately and failed to detect

apparent trading irregularities and inconsistent trading recommendations to customers by the firm's registered representatives. The findings also stated that, upon receipt of customer complaints against representatives of the firm, the firm, acting through Goldstein and Phelps, failed to establish, maintain, and enforce a reasonable supervisory system with a view towards preventing high-pressure sales tactics, unauthorized trading, misrepresentations or omissions, and unwarranted price projections. In addition, NASD found that the firm failed to record the entry and execution times on order tickets.

Phelps' suspension began November 17, 2003, and will conclude at the close of business December 16, 2003. Goldstein's suspension will begin December 17, 2003, and will conclude at the close of business January 15, 2004. (NASD Case #C07030069)

Firms and Individuals Fined

Baldwin & Clarke Capital Markets, Inc. (CRD #34380, Bedford, New Hampshire) and John Joseph Clarke, Jr. (CRD #1048942, Registered Principal, Epping, New Hampshire) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, as the placement agent for a private offering, failed to establish a proper escrow account at a bank. The findings also stated that, in connection with the private offering, the firm, acting through Clarke, authorized the partial release of \$280,000 from the escrow account to issuers at a time when the minimum contingency of \$650,000 had not been reached. The findings also stated that, because the offering's expiration date had passed, the escrowed funds should have been returned to investors. In addition, NASD found that the firm, acting through Clarke, permitted an individual to continue to perform duties as a registered person at a time his registration status with NASD was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Rule 1120. Furthermore, NASD found that the firm, acting through Clarke, failed to have a written needs analysis and a written training plan in order to achieve compliance with the Firm Element of the Continuing Education Rule. (NASD Case #C11030037)

Maximum Financial Investment Group, Inc. (CRD #40096, Troy, Michigan) and Christopher Thomes Paganes (CRD #2173707, Registered Principal, Birmingham, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$16,000, \$13,000 of which is jointly and severally with Paganes. Without admitting or denying the allegations, the firm and Paganes consented to the described sanctions and to the entry of findings that the firm, acting through Paganes, used the mails or other means or

instrumentalities of interstate commerce to effect transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm, acting through Paganes, prepared inaccurate trial balance and net capital computations. NASD also found that the firm, acting through Paganes, filed FOCUS Part IIA Reports with NASD that were inaccurate and overstated the firm's net capital. (NASD Case #C8A030082)

Pennaluna and Co., Inc. (CRD #11604, Coeur d'Alene, Idaho) and Ronald Nicklas, Jr. (CRD #1055099, Registered Principal, Hayden Lake, Idaho) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured, fined \$10,000 jointly and severally, and ordered to pay \$7,877.20 in restitution to public customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Nicklas, effected sales of securities to public customers as principal and charged its customers more than a fair markup, taking into consideration all relevant circumstances, including market conditions with respect to such securities at the time of the transactions, the expense involved, and the fact that the firm was entitled to a profit. NASD found that the relevant markups ranged from approximately 8.1 to 150 percent. (NASD Case #C3B030018)

Firms Fined

A.B. Watley, Inc. (CRD #797, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations concerning short-sale transactions within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short-sale transactions in NASDAQ National Market (NNM®) securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short-sale transactions. (NASD Case #CMS030233)

Credit Suisse First Boston Corporation (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$38,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report through the Automated Confirmation Transaction Service™ (ACT™) last-sale reports of transactions in a NASDAQ SmallCap™ security. NASD found that the firm executed short-sale orders and failed to make an affirmative determination prior to executing such orders. The

findings stated that the firm, in customer transactions in which it acted as principal for its own account, failed to provide written notification disclosing to its customers the correct reported trade price, and provided incorrect written notification disclosing to its customers that the transaction was executed at an average price when it was not. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in Consolidated Quotations Service (CQS) securities. In addition, NASD found that the firm transmitted to the Order Audit Trail SystemSM (OATSSM) reports that contained inaccurate timestamps and account codes. The firm also transmitted to OATS execution reports that contained inaccurate, incomplete, or improperly formatted data that prevented the OATS system from linking the OATS execution reports to the related trade reports in the ACT Service.

Furthermore, NASD found that the firm failed to timely report to OATS Reportable Order Events (ROEs). NASD also found that the firm submitted to OATS reports with respect to equity securities traded on The Nasdaq Stock Market that were not in the electronic form prescribed by NASD. The subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site. (NASD Case #CMS030255)

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected transactions in OTC Equity Options for public customer accounts that exceeded the applicable NASD Equity Option Position Limit. (NASD Case #CMS030239)

INTL Trading Inc. (CRD #45993, Altamonte Springs, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in OTC Equity securities, and failed to designate through ACT such last-sale reports as late. The findings also stated that firm incorrectly designated as ".SLD" through ACT last-sale reports of transactions in OTC Equity securities executed outside normal market hours. In addition, the findings stated that the firm failed to enforce supervisory procedures reasonably designed to achieve compliance with NASD's rules regarding trade reporting. (NASD Case #CMS030235)

Knight Equity Markets, L.P. (CRD #38599, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$43,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it was a party to a locked/crossed market condition prior to the market opening and received a

Trade-or-Move message in each instance through SelectNet® and, within 30 seconds of receiving such message, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market.

The findings also stated that the firm, as a market maker in securities, caused a locked/crossed market condition prior to the market opening by entering bid or ask quotations that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet to the market maker(s) whose quotes it locked or crossed a Trade-or-Move message that was at the receiving market's quoted price and whose aggregate size was at least 5,000 shares.

NASD also found that an order was presented to the firm at its published bid or offer in an amount up to its published quotation size and failed to execute the orders upon presentation, thereby failing to honor its published quotation. In addition, NASD found that the firm failed to report the correct execution time through ACT in one "as of" trade report of a transaction in an NNM security; incorrectly designated as ".PRP" through ACT last-sales reports of transactions in SmallCap securities and an OTC Equity security; failed to report the correct prior preference time through ACT in one report of a transaction in a SmallCap security for which the execution price was based on a prior reference point in time; executed long-sale transactions and incorrectly reported each to ACT with a short-sale or short-sale exempt modifier; and failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities as principal or agency. (NASD Case #CMS030226)

Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD #7691, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,500, and required to revise its written supervisory procedures with respect to securities laws and regulations concerning the reporting of options positions to NASD within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file with NASD a report with respect to each account which had established an aggregate position of 200 or more conventional option contracts (whether long or short) of the put class and call class on the same side of the market covering the same underlying security or index. The findings also stated that, in connection with the facilitation of an OTC collar transaction for a public customer, the firm established a short-stock position in an equity security and thereafter failed to maintain the size of its short-stock position in the security. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the reporting of options positions to NASD. (NASD Case #CMS030251)

Metropolitan Investment Securities, Inc. (CRD #14146, Spokane, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured; fined \$500,000; ordered to offer \$2,882,010 in restitution to public customers; required to complete its review and revision, as appropriate, of all systems, supervision, training, and written procedures relating to the sales of all proprietary products to ensure that all material facts are disclosed to customers, that all recommendations to customers are suitable, and that all advertising and sales literature are in compliance with NASD rules; and ordered to establish a Special Escrow Account. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through its agents, engaged in fraudulent and deceptive sales practices by making material misrepresentations and omitting material facts in connection with the sale of proprietary products to customers.

The findings also stated that the firm, acting through its agents, did not have an adequate basis for recommending the proprietary products to certain investors, made recommendations and sales of proprietary products to public customers for whom such sales were unsuitable, and used misleading advertising and sales literature to sell the proprietary products. NASD found that these advertisements did not include adequate language regarding the risks associated with the proprietary products and omitted the principal risk factors associated with the investments. In addition, the findings stated that the advertisements also failed to provide a sound basis for evaluating the facts in regard to the proprietary product being offered. Furthermore, NASD found that the comparison of the proprietary products to bank products was unfair and unbalanced in that it failed to include the material differences between the subjects of comparison as required by NASD Rule 2210(D)(2). Moreover, NASD found that the firm, acting through its agents, disseminated sales scripts to its registered representatives that were, among other things, materially misleading in that they emphasized only the positive features of the proprietary products and omitted the principal risk factors; also, the scripts failed to provide a sound basis for evaluating the facts in regard to the proprietary products being offered. The findings also stated that the firm, acting through its agents, utilized form letters that were, among other things, materially misleading in that they emphasized only the positive features of the proprietary products, omitted the principal risk factors, and failed to provide a sound basis for evaluating the facts in regard to the proprietary products being offered.

NASD found that the firm's supervisory system and procedures were inadequate and did not appropriately deter and detect violations of NASD rules, including misrepresentation and omissions in the sale of its proprietary products, unsuitable recommendations and inadequate review and approval of sales of proprietary products, and misleading and violative advertising and sales literature. The findings also stated that the firm's written supervisory procedures were inadequate in that, among

other things, they did not specify how the registered representatives' activities would be monitored to ensure that they made fair and balanced sales presentations and suitable recommendations; the written supervisory procedures were completely silent regarding sales presentations regarding proprietary products; and, although many or most representatives sold primarily proprietary products to their customers, the firm did not provide adequate compliance training regarding sales presentations, and did not provide guidance concerning the risk level of the proprietary products or whether they were appropriate for investors with a low to medium risk tolerance and/or preservation of capital as a primary investment objective. NASD also found that the firm, acting through its agents, did not have reasonable grounds to believe the recommendations to customers of its proprietary products were reasonable, and failed to maintain in its files records indicating the basis for such recommendation. (NASD Case #C3B030019)

Paragon Capital Markets, Inc. (CRD #18555, East Hanover, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise its written supervisory procedures with respect to order execution quality reports, order routing information reports, and best execution within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to ACT the contra side-executing broker in transactions in eligible securities. NASD found that, on trade dates, the firm failed to report to ACT the correct symbol indicating whether it executed transactions in eligible securities in a principal or agency capacity. The findings stated that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in OTC equity securities. In addition, NASD found that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in OTC equity securities and failed to designate through ACT such last-sale reports as late. Furthermore, NASD found that the firm incorrectly designated as ".T" through ACT last-sale reports of transactions in OTC equity securities executed during normal market hours; incorrectly designated as ".SLD" through ACT last-sale reports of transactions in OTC equity securities reported to ACT within 90 seconds of execution; failed to make available a report on the covered orders in national market system securities that it received for execution from any person; and failed to make available in a timely manner a report on the covered orders in a national market system securities that it received for execution from any person. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning order execution quality reports, order routing information reports, and best execution. (NASD Case #CMS030250)

Pond Equities (CRD #30934, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in OTC Equity securities, and failed to designate through ACT such last-sale reports as late. (**NASD Case #CMS030234**)

Pulse Trading, Inc. (CRD #104022, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations concerning the Bid Test Rule within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short-sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the Bid Test Rule. (**NASD Case #CMS030236**)

Rushmore Securities Corporation (CRD #8392, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report to OATS ROEs during the review period. NASD found that the firm also submitted to OATS reports with respect to equity securities traded on The Nasdaq Stock Market that were not in the electronic form prescribed by NASD. The findings stated that the subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS reporting. (**NASD Case #CMS030252**)

S & L, L.L.C. (CRD #47524, Northbrook, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations concerning OATS within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS on 132 business days. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS. (**NASD Case #CMS030247**)

Signator Investors, Inc. (CRD #468, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that a registered representative of the firm misused and converted \$260,000 of municipal employee funds by placing them into non-participant accounts and into his own account. The findings also stated that the firm had inadequate written supervisory procedures relating to the supervision of accounts funded through employer payroll withholding. In addition, the findings stated that the firm's supervisory system was not reasonably designed to prevent and detect diversion of funds by registered representatives responsible for the firm's employer salary withholding accounts. NASD also found that the firm's supervisory system had inadequate checks and balances to confirm whether particular participants were entitled to certain allocations and whether individuals receiving funds were actually legitimate employee participants. (**NASD Case #C11030038**)

The Seidler Companies Incorporated (CRD #3911, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$19,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. NASD also found that the firm executed short-sale orders and failed to maintain a written record of the affirmative determination made for such orders. The findings stated that the firm failed to report to ACT the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt, or cross transactions in eligible securities. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agent capacity. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the reporting of short-sale transactions to NASD. (**NASD Case #CMS030227**)

Wilson-Davis & Co., Inc. (CRD #3777, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations concerning SEC Rules 11Ac1-5, 11Ac1-6, Best Execution, Transaction Reporting, OATS, and Anti-Competitive Practice within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make available a report on the covered orders in national market system securities that it received for execution from any person. The findings also stated that the firm's supervisory system did

not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning SEC Rules 11Ac1-5, 11Ac1-6, Best Execution, Transaction Reporting, OATS, and Anti-Competitive Practice. (NASD Case #CMS030228)

XCU Capital Corporation, Inc. (CRD #19899, Carlsbad, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$87,000, and required to offer to convert the B shares of public customers to A shares at its expense using a letter that includes a comparison of the cost of purchasing B shares with the cost of purchasing A shares over at least seven years and that includes the effect of internal expenses. The firm shall also require in-person attendance of all of its registered representatives and principals at a training program that addresses the economic considerations applicable to the recommendations of B shares and the availability of sales charge breakpoints. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through its agents, recommended and effected, or caused to be effected, purchases of large positions of Class B mutual fund shares in customer accounts without a reasonable basis for believing them to be suitable for the customers. The findings stated that the firm, acting through its agents, failed to establish, maintain, and enforce a supervisory system reasonably designed to enable the firm and its supervisors to prevent and detect unsuitable large Class B share positions. The findings further stated that the firm, acting through a registered representative, utilized sales materials that consisted of a hypothetical sales charge projection that was unbalanced and failed to provide prospective investors with a sound basis for evaluating the facts. NASD also found that the firm failed to file the projection with NASD's Advertising Regulation Department. (NASD Case #C02030067)

Individuals Barred Or Suspended

Mitchell Mark Almy (CRD #1059866, Registered Principal, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Almy consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders in NASDAQ securities through a member firm account at its clearing firm in order to improve the National Best Bid or Offer (NBBO) through an electronic communications network (ECN). NASD found that, after having entered such orders, Almy knowingly and intentionally entered large orders on the other side of the market to buy and sell shares of such securities in a member firm proprietary account through a clearing firm. The findings stated that Almy knew that the orders placed on behalf of the member firm proprietary account would be routed to market makers whose automated execution systems were programmed to buy or

sell, and did buy or sell, such securities on an automated basis at prices equal to the NBBO and in an amount greater than the NBBO. The findings also stated that Almy, by knowingly and intentionally engaging in this course of conduct, was able, on behalf of a member proprietary account, to buy shares of these securities at prices that were lower, and sell shares at prices that were higher, than he would otherwise have been able to obtain, but for his entry of the NBBO improving orders into securities. In addition, NASD found that, within a short time after Almy received the executions of the orders, he knowingly and intentionally canceled each of the priced limit orders that he had placed, thereby generating profits of approximately \$685.

Almy's suspension began December 1, 2003, and will conclude at the close of business December 31, 2003. (NASD Case #CMS030253)

Theodore Sanidad Alvia (CRD #3086395, Registered Representative, Schaumburg, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Alvia executed securities transactions in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in the accounts. The findings also stated that Alvia failed to respond to NASD requests for information. (NASD Case #C8A030028)

Leslie Anne Andrade (CRD #1225136, Associated Person, Greeley, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Andrade consented to the described sanction and to the entry of findings that she made false journal entries to the ledgers of her member firm to conceal trading losses incurred by another individual. NASD found that upon instructions from the individual, Andrade made journal entries to the ledgers of the firm to facilitate and conceal the conversion of public customers, fully-paid for money market securities to cover the individual's trading losses. The findings also stated that Andrade knowingly provided substantial assistance to the individual in connection with their conversion of customer securities, and Andrade knew that her conduct was illegal or improper. (NASD Case #C3A030045)

Keith Jacob Andrews (CRD #2089621, Registered Representative, Romeoville, Illinois) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Andrews consented to the described sanction and to the entry of findings that he endorsed a \$10,000 check made payable to a public customer and deposited the check into an account he controlled, without the customer's authorization, knowledge, or consent. The findings also stated that Andrews failed to respond to NASD requests for information and documentation. (NASD Case #C8A030070)

Anthony James Apuzzo (CRD #2431669, Registered Representative, Staten Island, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Apuzzo, while using the means and instrumentalities of interstate commerce to offer securities for sale, omitted to state material facts necessary in order to make the statements made in connection with such offer, in light of the circumstances in which they were made, not misleading. The findings also stated that Apuzzo made material misrepresentations in the form of price predictions to induce transactions, and the transactions did occur. (**NASD Case #C3A030007**)

John Robert Bingham (CRD #1917145, Registered Representative, Keller, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bingham effected \$2,007,833.61 in unauthorized transactions in the account of public customers for his own economic benefit without the customers' prior knowledge or consent. The findings also stated that Bingham failed to respond to NASD requests for information. (**NASD Case #C05020060**)

Richard Graham William Boardman (CRD #834736, Registered Principal, Cambridge, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Boardman consented to the described sanction and to the entry of findings that he converted approximately \$137,000 of a public customer's funds intended for investment purposes, without the knowledge, authorization, or consent of the customer. (**NASD Case #C11030036**)

Robert Preston Buckingham (CRD #2808859, Registered Representative, Omaha, Nebraska) was barred from association with any NASD member in any capacity. The sanction was based on findings that Buckingham processed checks received by his member firm from public customers totaling \$95,000 for the purchase of securities without the customers' knowledge or consent and deposited the checks into his personal account at the firm, thereby converting the funds to his own use and benefit. The findings also stated that Buckingham failed to respond to NASD requests for information. (**NASD Case #C04030006**)

Thomas Steven Canecchia (CRD #2138352, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Canecchia reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Canecchia consented to the described sanctions and to the entry

of findings that he allowed individuals to engage in a securities business, for compensation, while not properly registered with NASD.

Canecchia's suspension began December 1, 2003, and will conclude at the close of business May 31, 2004. (**NASD Case #C10030094**)

Hyek Chung (CRD #3195676, Registered Representative, Toledo, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Chung reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Chung consented to the described sanctions and to the entry of findings that he received \$11,000 from a public customer to be used to transact short sales in a common stock in Chung's personal securities account. The findings also stated that Chung deposited the funds into his personal checking account and, sold shares of the stock for his personal securities account, but failed to keep an accounting of which short sales were for the benefit of the customer and which were for his own benefit. In addition, the findings stated that the customer directed Chung to cover the short sales but there were no funds available in the account to make the purchases to cover the short sales, thereby using the funds of the customer for some purpose other than the benefit of the customer without the customer's knowledge and authorization.

Chung's suspension began November 17, 2003, and will conclude at the close of business November 16, 2005. (**NASD Case #C8B030021**)

Alan Steven Cohen (CRD #2237526, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 60 days. In light of the financial status of Cohen, no monetary sanction has been imposed. Without admitting or denying the allegations, Cohen consented to the described sanction and to the entry of findings that he represented to a public customer that he and at least one other broker would act as representatives on the customer's joint account but failed to trade the joint account and to monitor the activities in the account. The findings also stated that Cohen failed to advise adequately public customers that their account would be traded pursuant to a day-trading strategy and the risks associated with day trading. In addition, NASD found that, without sufficient knowledge of the activities in the joint account, Cohen failed to disclose to the customer that he was not monitoring activities in the account, improperly told a public customer that he need not be concerned about activities in the account, and gave assurances concerning the account when he did not know all the material facts.

Cohen's suspension began November 17, 2003, and will conclude at the close of business January 15, 2004. (NASD Case #C10030083)

Michael Paul DeMarse (CRD #2166872, Registered Principal, Paramus, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was ordered to pay \$64,949, plus interest, in restitution to a public customer and barred from association with any NASD member in any capacity. The restitution must be paid before DeMarse reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DeMarse consented to the described sanctions and to the entry of findings that he made improper use of \$18,000 from a public customer's account. NASD also found that DeMarse exercised control over a public customer's accounts and effected numerous and excessive securities transactions in the accounts in a manner that was inconsistent with the customer's financial situation, investment objectives, and needs. The findings also stated that DeMarse failed to respond to NASD requests for information. (NASD Case #C9B030078)

Frank DePasquale (CRD #2966311, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,000, including disgorgement of \$25,000, and suspended from association with any NASD member in any capacity for seven months. The fine must be paid before DePasquale reassociates with a member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DePasquale consented to the described sanctions and to the entry of finding that he entered into an arrangement with another individual who was not properly registered in the State of New Jersey to sell securities to circumvent New Jersey's denial of registration. NASD found that, as part of this arrangement, the individual falsified a New Jersey public customer's account records so that DePasquale appeared as the registered representative of record for an account actually handled by the individual. The findings also stated that DePasquale and the individual equally split all commissions paid as a result of transactions in that account even though the individual solely controlled the subject account and was not registered to sell securities in New Jersey. In addition, NASD found that DePasquale improperly received approximately \$25,000 in commissions from the trading activity in the account.

DePasquale's suspension began October 16, 2003, and will conclude May 15, 2004. (NASD Case #C9B030073)

Patrick W. Donohue (CRD #4168054, Registered Representative, Moreno Valley, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Donohue forged a public customer's signature to effect wire transfers and transferred \$6,000 from the customer's account at his member firm to his personal bank account, thereby converting the funds to his own use and benefit.

The findings also stated that Donohue failed to respond to NASD requests for information. (NASD Case #C02030030)

Stephen Jay Drescher (CRD #2619465, Registered Principal, Remsenburg, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Drescher engaged in securities fraud and in a conspiracy to commit securities fraud. (NASD Case #CAF020029)

Michael Frederick Flannigan (CRD #1135700, Registered Principal, Excelsior, Minnesota) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for five business days and barred from association with any NASD member in any principal or supervisory capacity. In light of the financial status of Flannigan, no monetary sanctions have been imposed. Without admitting or denying the allegations, Flannigan consented to the described sanctions and to the entry of findings that, acting on behalf of his member firm, he employed an individual as a general securities representative in the branch office of his member firms; and allowed, aided, and assisted the individual in assuming the duties and performing the functions of a registered principal, including general supervision of the branch, without being properly registered. The findings also stated that Flannigan failed to establish and maintain a system to supervise the activities of registered representatives and associated persons designed to achieve compliance with applicable laws, rules, and regulations related to obtaining customer account information for customers at the branch office. The findings also stated that Flannigan failed to obtain suitability information regarding public customers and to transcribe it on new account forms relating to the firm's participation in an offering and the customers' purchase of shares in the offering. In addition, the findings stated that Flannigan participated in a penny stock offering and failed to comply with the requirements of SEC rules 15g-1 through 15g-9.

Flannigan's suspension began December 1, 2003, and concluded at the close of business December 5, 2003. (NASD Case #C04030024)

Lee Edward Goldner (CRD #1613576, Registered Representative, South Haven, Michigan) submitted an Offer of Settlement in which he was fined \$12,293, including disgorgement of commissions received of \$9,793, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Goldner consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed and neglected to give prompt written notice to his member firm.

Goldner's suspension began November 24, 2003, and will conclude at the close of business December 23, 2003. (NASD Case #C8A030018)

Delbert William Gray (CRD #1374128, Registered Representative, Meridian, Idaho) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gray consented to the described sanction and to the entry of findings that, without the knowledge or consent of public customers, he deposited \$817,122 of the customers' funds that were intended for the purchase of securities into a bank account he controlled, thereby converting the customers' funds to his own use and benefit. The findings stated that Gray subsequently returned \$37,000 to the customers, thereby converting \$780,122 of customers' funds to his own use and benefit. (**NASD Case #C3B030017**)

Drummond Bernard Gearson MacKinnon (CRD #1505953, Registered Representative, Belton, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before MacKinnon reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, MacKinnon consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers without their prior knowledge, authorization, or consent.

MacKinnon's suspension began November 17, 2003, and will conclude May 16, 2004. (**NASD Case #C04030056**)

Robert Douglas Grimes (CRD #1223554, Registered Representative, Covington, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grimes consented to the described sanction and to the entry of findings that he requested his member firm to wire funds or issue checks totaling \$326,402 for the purpose of withdrawing funds from the securities and individual retirement accounts of a public customer and converted the funds to his own use and benefit by endorsing and negotiating the checks without the knowledge or consent of the customer. The findings also stated that Grimes failed to respond to NASD requests for information. (**NASD Case #C05030053**)

Rudi Richard Hoffman (CRD #1172103, Registered Principal, Port Orange, Florida) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Hoffman consented to the described sanctions and to the entry of findings that he failed to timely amend his Uniform Application for Securities Registration or Transfer (Form U4).

Hoffman's suspension began December 1, 2003, and will conclude at the close of business January 29, 2004. (**NASD Case #C07030014**)

William Gordon Hoover, Jr. (CRD #249808, Registered Representative, Greenwood Village, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hoover consented to the described sanction and to the entry of findings that, while associated with his member firm, he participated in private securities transactions without providing written notification to, or obtaining written approval from, the firm. The findings also found that Hoover failed to disclose material facts on his Form U4. NASD also stated that Hoover failed to respond to NASD requests for information. (**NASD Case #C3A030043**)

Gary Joseph Hudecek (CRD #1757339, Registered Representative, Riverside, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hudecek consented to the described sanction and to the entry of findings that, while associated with a member firm, he made improper use of a public customer's funds without authorization. (**NASD Case #C8A030072**)

Robert William Jenkins, IV (CRD #2222958, Registered Representative, Mendon, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jenkins consented to the described sanction and to the entry of findings that he engaged in private securities transactions, for compensation, without providing written notice to, or receiving approval from, his member firm prior to engaging in such activities. The findings also stated that Jenkins provided documents to NASD that he knew, or should have known, were false or had been forged. The findings further stated that Jenkins failed to respond to NASD requests for information. (**NASD Case #C8A030076**)

Kirk William Kanatani (CRD #2101338, Registered Representative, Prairieville, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Kanatani consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of a variable life contract by a public customer without having reasonable grounds for believing that the recommendation and resultant transactions were suitable for the customer on the basis of his financial situation and needs.

Kanatani's suspension began December 15, 2003, and will conclude at the close of business January 27, 2004. (**NASD Case #C05030057**)

John Joseph Katsock, Jr. (CRD #2497641, Registered Principal, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Katsock omitted to disclose material information to public customers. NASD found that Katsock made an unsuitable recommendation to a public customer and made improper and baseless price predictions. The findings also stated that Katsock failed to respond to NASD requests to appear for on-the-record interviews. (**NASD Case #C9A020018**)

Bradley Evan Kirk (CRD #4332339, Registered Representative, Crystal Lake, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Kirk reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kirk consented to the described sanctions and to the entry of findings that he completed disability income policy applications and forged the signatures of public customers to be applied on the policies without the customers' knowledge or consent. The findings also stated that Kirk submitted the applications to insurance companies for processing and paid the initial 12-month premium for each policy out of his personal business checking account without the customers' knowledge or consent.

Kirk's suspension began December 1, 2003, and will conclude at the close of business August 31, 2004. (**NASD Case #C8A030074**)

Nick Lalla (CRD #4545441, Registered Representative, Patchogue, New York) submitted an Offer of Settlement in which he was fined \$3,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Lalla reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lalla consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

Lalla's suspension began November 17, 2003, and will conclude May 16, 2004. (**NASD Case #CLI030018**)

Frank Anthony Leonardo (CRD #2523774, Registered Principal, Flushing, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Leonardo willfully failed to disclose material information on his Form U4. (**NASD Case #C9B030028**)

Cynthia Lee Lunsford (CRD #4491853, Registered Representative, Columbus, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which she was suspended from association with any NASD member in any capacity for 18

months. In light of the financial status of Lunsford, no monetary sanctions were imposed. Without admitting or denying the allegations, Lunsford consented to the described sanction and to the entry of findings that she affixed the signatures of public customers on confidential suitability questionnaires and master account agreements, and affixed the initials of public customers on insurance needs worksheets without the customers' knowledge or consent.

Lunsford's suspension began December 1, 2003, and will conclude at the close of business May 31, 2005. (**NASD Case #C8A030079**)

David Nshoya Magoti (CRD #4536274, Associated Person, East Lansing, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Magoti failed to respond to NASD requests for information. The findings also stated that Magoti willfully failed to disclose a material fact on his Form U4. (**NASD Case #C8A030041**)

Paul Anthony Matten (CRD #1312239, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Matten consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for documents and information. (**NASD Case #CMS030231**)

Enrico Mazzola (CRD #2162960, Registered Representative, East Northport, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. The fine must be paid before Mazzola reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mazzola consented to the described sanctions and to the entry of findings that he engaged in activities that required registration with NASD while his registration status was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirement.

Mazzola's suspension began December 1, 2003, and will conclude at the close of business December 19, 2003. (**NASD Case #C10030092**)

James Lawrence McMahan (CRD #1609091, Registered Representative, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before McMahan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without

admitting or denying the allegations, McMahan consented to the described sanctions and to the entry of findings that he received non-public confidential information and passed on the information to a client, recommending that the client purchase shares of stock and liquidate the stock the following day on the assumption the share price would rise. The findings stated that the customer purchased the stock and McMahan earned commissions on the trade and expected the benefit of an improved reputation with his customer.

McMahan's suspension began November 17, 2003, and will conclude at the close of business November 16, 2004. (NASD Case #C07030074)

Gabriel Frank Migliano, Jr. (CRD #2687663, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, required to pay \$22,508 in disgorgement of commissions in partial restitution to a customer, and suspended from association with any NASD member in any capacity for one month. The fine must be paid before Migliano reassociates with an NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Migliano consented to the described sanctions and to the entry of findings that he exercised control over the account of a customer and effected numerous securities transactions in this account using unsuitable levels of margin in a manner that was inconsistent with the customer's investment objectives. Migliano's suspension began November 3, 2003, and concluded at the close of business December 2, 2003. (NASD Case #C9B030072)

James Robert Miller (CRD #4269827, Registered Representative, Wauwatosa, Wisconsin) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Miller consented to the described sanction and to the entry of findings that he prepared and submitted to his member firm academic credit confirmations and indemnity and hold harmless agreements for students in an internship program that he knew, or should have known, bore the forged signatures of university representatives. (NASD Case #C8A030068)

Robert Theodore Milley, II (CRD #1607431, Registered Representative, Yardley, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Milley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Milley consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm of the transaction and his proposed role therein.

Milley's suspension began November 17, 2003, and will conclude at the close of business January 15, 2004. (NASD Case #C9A030035)

Jeffrey Jonathan Mills (CRD #2695464, Registered Representative, West Orange, New Jersey) was fined \$5,000 and suspended from association with any NASD member in any capacity for 12 months. The sanction was based on findings that Mills willfully failed to disclose material information on his Form U4.

Mills' suspension began October 20, 2003, and will conclude at the close of business October 20, 2004. (NASD Case #C10020076)

Larry Laverne Nelson (CRD #1378197, Registered Principal, Coral Springs, Florida) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 10 business days and barred from association with any NASD member in any principal or supervisory capacity. In light of the financial status of Nelson, no monetary sanctions have been imposed. Without admitting or denying the allegations, Nelson consented to the described sanctions and to the entry of findings that he failed to establish and maintain a system to supervise the activities of registered representatives and associated persons that was reasonably designed to achieve compliance with applicable laws, rules, and regulations related to obtaining customer account information for customers at a branch office of his member firm. The findings also stated that Nelson failed to obtain vital suitability information regarding public customers, and failed to transcribe it on new account forms relating to the firm's participation in an offering and the customers' purchase of shares in the offering. In addition, the findings stated that Nelson, acting on behalf of his member firm, permitted, aided, and assisted an individual in performing the functions of a registered representative without being properly registered with NASD. The findings further stated that Nelson, acting on behalf of his member firm, participated in an offering and failed to comply with the requirements of SEC Rules 15g-1 through 15g-9.

Nelson's suspension began December 1, 2003, and concluded at the close of business December 12, 2003. (NASD Case #C04030024)

William Thomas Newmiller (CRD #4606691, Associated Person, Drexel Hill, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Newmiller reassociates with any member following the suspension or prior to requesting relief from any statutory disqualification. Without admitting or denying the allegations, Newmiller consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Newmiller's suspension began December 1, 2003, and will conclude February 29, 2004. (NASD Case #C9A030036)

Kenneth Onorato (CRD #4106235, Registered Representative, Copiague, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Onorato consented to the described sanction and to the entry of findings that he deposited \$1,000 into his personal checking account rather than the account of a public customer while processing wire transfers for the customer. (NASD Case #CLI030022)

Anthony Frank Rana (CRD #4548061, Associated Person, Perth Amboy, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Rana reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rana consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. NASD also found that Rana failed to respond timely to NASD requests for information.

Rana's suspension began December 1, 2003, and will conclude at the close of business August 31, 2004. (NASD Case #C9B030075)

Abraham Salzberg (CRD #2896451, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,500 and suspended from association with any NASD member in any capacity for 45 business days. The fine must be paid before Salzberg reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Salzberg consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing prompt written notice to his member firm.

Salzberg's suspension began November 17, 2003, and will conclude at the close of business January 21, 2004. (NASD Case #C10030084)

Mike Shamai (CRD #4251905, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Shamai consented to the described sanctions and to the entry of findings that he settled a public customer's complaint alleging unauthorized trading by executing a settlement agreement with the customer in which he agreed to

reimburse the customer for various losses from securities transactions without informing and obtaining authorization from his member firm.

Shamai's suspension began December 1, 2003, and will conclude with the close of business January 13, 2004. (NASD Case #C10030089)

Daniel Michael Spalango, Jr. (CRD #2538943, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, including disgorgement of \$5,991.69 in commissions, required to pay \$38,067.53 in restitution to a public customer, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Spalango reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Spalango consented to the described sanctions and to the entry of findings that he exercised control over the account of a public customer, effected numerous and excessive securities transactions in the account, and used unsuitable levels of margin in a manner that was inconsistent with the customer's investment objectives.

Spalango's suspension began December 1, 2003, and will conclude at the close of business May 31, 2004. (NASD Case #C9B030077)

Mitzi Sue Stamps (CRD #1339173, Registered Principal, Lenior City, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stamps consented to the described sanction and to the entry of findings that she issued checks totaling \$24,099.51 made payable to herself from the operating account of her member firm and converted the funds to her own use and benefit by endorsing and negotiating the checks, without the knowledge or consent of her member firm. (NASD Case #C05030054)

Todd Christopher Sunday (CRD #2682966, Registered Representative, Columbus, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for eight weeks, and ordered to disgorge \$5,250, plus interest, in commissions in partial restitution to public customers. The fine and restitution must be paid before Sunday reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sunday consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction, for compensation, and failed and neglected to give written notice to, and receive written approval from, his member firm.

Sunday's suspension began December 15, 2003, and will conclude February 8, 2004. (**NASD Case #C8B030024**)

Ryan Michael Sweeney (CRD #3068278, Registered Representative, Doylestown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sweeney consented to the described sanction and to the entry of findings that he converted \$5,700 from a business owned and operated by a fellow registered representative of his member firm. NASD found that Sweeney converted these funds by withdrawing the funds from the business and owner's bank accounts and using the funds for his own purposes. (**NASD Case #C9A030037**)

Larry Andrew Tipton (CRD #447261, Registered Representative, Seminole, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Tipton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Tipton consented to the described sanctions and to the entry of findings that he signed promissory notes to a former public customer to reimburse the customer for losses relating to a stock purchase incurred in the customer's account at a member firm.

Tipton's suspension began December 1, 2003, and will conclude at the close of business December 30, 2003. (**NASD Case #C07030076**)

William Clarence Thrower (CRD #4590916, Associated Person, Englewood, Colorado) was barred from association with any NASD member in any capacity. The sanction was based on findings that Thrower failed to respond to NASD requests for information. NASD also found that Thrower failed to disclose material information on his Form U4. (**NASD Case #C3A030013**)

Steven Wayne Torrico (CRD #1666636, Registered Supervisor, Glen Rock, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any principal or supervisory capacity for three months and required to requalify as a general securities sales supervisor. Without admitting or denying the allegations, Torrico consented to the described sanctions and to the entry of findings that he failed to reasonably supervise certain mutual fund sales by a registered representative as to detect and prevent violations of applicable NASD and SEC rules.

Torrico's suspension began December 1, 2003, and will conclude February 29, 2004. (**NASD Case #C9B030074**)

Keith Kai Wong (CRD #3176078, Registered Representative, Bayside, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Wong reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wong consented to the described sanctions and to the entry of findings that, in an attempt to mollify a public customer complaint about contingent deferred sales charges incurred as a result of mutual fund sales, he paid \$2,207 to the customer's personal representative and Power of Attorney to settle the complaint without the knowledge or consent of his member firm.

Wong's suspension began November 17, 2003, and will conclude at the close of business December 15, 2003. (**NASD Case #C10030085**)

Ilya Steven Zeidenfeld, Jr. (CRD #2623090, Registered Representative, West Long Branch, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Zeidenfeld reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zeidenfeld consented to the described sanctions and to the entry of findings that he effected securities transactions away from his member firm without prior written notification to his member firm.

Zeidenfeld's suspension began November 17, 2003, and will conclude at the close of business January 15, 2004. (**NASD Case #C10030086**)

James Charles Zerilli (CRD #1041268, Registered Representative, Grosse Point Woods, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Zerilli reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zerilli consented to the described sanctions and to the entry of findings that he affixed, or caused to be affixed, the signatures of public customers to life insurance perspective fixed and variable annuity applications, a request for transfer of assets, and a perspective variable annuity service request form and submitted them to an insurance company without the consent or knowledge of the customers.

Zerilli's suspension began December 1, 2003, and will conclude at the close of business November 30, 2005. (**NASD Case #C8A030077**)

Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

John Douglas Audifferen (CRD #2053214, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he purchased shares of stock for a public customer in the cash account of the customer at his member firm and knew, or should have known, that the customer did not have sufficient cash to cover the cost of the purchases. The complaint also alleges that Audifferen deposited his own funds into the account to cover the cost of the purchases, thereby willfully violating Regulation T by directly or indirectly extending credit to or for the customer's account. In addition, the complaint alleges that Audifferen sold securities from the account of a public customer, received \$17,500 from the customer that represented, in part, proceeds from the sale, thereby obtaining the beneficial use of an extension of credit and willfully causing his member firm to violate Regulation T. Moreover, the complaint alleges that Audifferen maintained a securities account at his member firm, purchased and sold securities in the account, and knew he did not have sufficient margin or sufficient funds to cover the costs of the purchases, thereby causing his member firm to make an extension of credit to him in violation of Regulation T. Furthermore, the complaint alleges that Audifferen failed to disclose information on his Form U4. (NASD Case #C10030095)

Elena Laura Bianchi (CRD #1675129, Registered Representative, Houston, Texas) was named as a respondent in NASD complaint alleging that she effected securities transactions in the accounts of public customers through the use of discretion without obtaining written authorization from the customers to use discretion in their accounts and without obtaining acceptance in writing by her member firm of the accounts as discretionary. (NASD Case #C06030024)

Perrin F. Burse (CRD #1908857, Registered Principal, Cincinnati, Ohio) was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to a public customer to purchase Class B shares in mutual funds and fund families when the customer did not intend to hold the funds long-term and Burse failed to obtain sales load discounts, breakpoint discounts, and to use letters of intent in recommending the purchases of mutual funds. The complaint also alleges that Burse recommended to a public customer to liquidate mutual funds and use the proceeds to purchase other Class B share mutual funds having similar investment objectives and the

recommendations incurred additional sales charges to the customer. The complaint further alleges that Burse recommended and effected the purchase of a \$1,160,000 variable life insurance policy to a public customer without having reasonable grounds for believing the recommendation and resulting transaction were suitable for the customer on the basis of his financial situation, investment objectives, and needs.

In addition, the complaint alleges that Burse affixed the signature of public customers on a Client Agreement to open an account at his member firm, on documents acknowledging that contingent deferred sales charges may be incurred when investing in Class B share mutual funds, and on distribution request forms authorizing the withdrawal of monies from the customer's securities account. Moreover, the complaint alleges that Burse engaged in a private securities transaction and failed to provide prior written notice to, and receive written authorization or acknowledgement from, his member firm. Furthermore, the complaint alleges that Burse obtained, in bad faith, a \$25,000 loan from a public customer and he has made no payments on the loan. The complaint also alleges that Burse failed to respond to NASD requests for documents and information. (NASD Case #C8B030023)

Gilbert Alan Cardillo (CRD #1110960, Registered Principal, Riverhead, New York) was named as a respondent in an NASD complaint alleging that he made an unsuitable recommendation to a public customer without reasonable grounds for believing the transaction was suitable for the customer based on the customer's financial situation and needs. (NASD Case #C10030087)

Howard Francis Curd (CRD #1786714, Registered Principal, Manhasset, New York) was named as a respondent in an NASD complaint alleging that a member firm, acting through Curd, failed to obtain the signature or initials of a principal of the firm indicating approval of research reports it disseminated. The complaint also alleges that Curd failed to file research reports with NASD's Advertising Regulation Department and failed to file the actual or anticipated date of first use. In addition, the complaint alleges that Curd failed to establish, maintain, and enforce written supervisory procedures and systems to supervise the activities of registered representatives and associated persons reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. Moreover, the complaint alleges that Curd knew, or should have known, of "red flags," in that one or more research reports failed to disclose material facts and contained material misrepresentations. Furthermore, the complaint alleges that Curd effected wash trades in securities between personal and corporate securities accounts that he owned or held an interest in to create the false appearance of trading volume and market interest in the securities.

The complaint also alleges that Curd, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive

devices or contrivances in connection with the purchase or sale of securities; knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities; and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint further alleges that Curd filed SEC Forms 3 and 5 and failed to report shares of a security in which he was a beneficial owner and failed to file an SEC Form 4 disclosing the selling and purchasing shares of the security. In addition, the complaint alleges that Curd was responsible for ensuring his firm's books and records were properly prepared and maintained and failed to maintain order tickets, corporate resolutions for accounts, new account forms, and e-mails that he received in his firm e-mail account. (NASD Case #CAF030056)

David Logan Froede (CRD #2032725, Registered Representative, Grand Rapids, Michigan) was named as a respondent in an NASD complaint alleging that, while associated with a member firm, he sent an account statement to a public customer that purported to reflect all activity in the customer's account for the previous twelve months but was misleading because it failed to reflect several transactions. The complaint also alleges that Froede signed, or caused to be signed, the customer's name on checks and withdrew \$250,000 from the customer's account and converted it to his own use and benefit without the customer's authorization, knowledge, or consent. The complaint further alleges that Froede failed to respond to NASD requests for information and documentation. (NASD Case #C8A030075)

Jerri Sharon Hunter (CRD # 4405016, Registered Representative, Silver Spring, Maryland) was named as a respondent in an NASD complaint alleging that she received \$2,578 from a public customer to assist the customer in selling a real estate time share, failed to assist the customer with selling the time share, and did not return the funds to the customer, thereby converting the funds. The complaint also alleges that Hunter failed to respond to NASD requests for information. (NASD Case #C07030070)

L.H. Ross & Company, Inc. (CRD #37920, Boca Raton, Florida), Sierra Brokerage Services, Inc. (CRD #36573, Columbus, Ohio), and Franklyn Ross Michelin (CRD #2459180, Registered Principal, Boca Raton, Florida) were named as respondents in an NASD complaint alleging that they participated, directly or indirectly, in undertakings involving the purchase of securities from issuers or affiliates of issuers with a view to the distribution of a common stock, and thereby acted as underwriters of unregistered securities. The complaint also alleges that L.H. Ross, acting through Michelin, directly or indirectly, bid for, purchased, or attempted to induce persons to bid for or purchase a security that was the subject of a

distribution while the firm was acting as a distribution participant. In addition, the complaint alleges that L.H. Ross and Sierra Brokerage engaged in a series of wash sales that created the false appearance of trading volume and market interest in a common stock and operated as a manipulation of the market in the stock. Moreover, the complaint alleges that L.H. Ross, Michelin, and Sierra Brokerage, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. Furthermore, the complaint alleges that L.H. Ross and Sierra Brokerage, acting through Michelin and others, engaged in a series of sales to public customers involving misrepresentations and omissions, unauthorized trades, and failures to execute sale orders.

The complaint alleges that L.H. Ross, acting through Michelin, effected transactions as principal at prices that were not fair and reasonable and taking into consideration all of the relevant factors. The complaint also alleges that L.H. Ross, acting through Michelin, charged its retail customers markups greater than 10 percent from the prevailing market price in transactions. In addition, the complaint alleges that L.H. Ross effected purchases of a common stock in customer accounts without the knowledge or authorization of the customers. The complaint also alleges that L.H. Ross failed to execute customer sell orders and made material misrepresentations and/or omitted material facts, including baseless price predictions in connection with the offer and sale of a common stock. Furthermore, L.H. Ross and Michelin failed to take reasonable and appropriate steps to ensure that the firm and its agents did not violate federal securities laws or NASD rules concerning fraudulent, abusive, and illegal sales practices. Moreover, L.H. Ross and Michelin failed to devise, maintain, and enforce a supervisory system that provided any mechanism or system to identify unregistered or restricted securities, ensuring that markups charged to customers were fair and ensuring that the firm did not engage in prohibited conduct during a distribution. (NASD Case #CAF030055)

Paul Edward Mize (CRD #2206359, Registered Representative, Sedona, Arizona) was named as a respondent in an NASD complaint alleging that he received \$50,000 from the sale of insurance policies of a public customer to a viatricals company, deposited the check in his personal bank account, and gave the customer \$9,500 to pay medical bills, but he has not remitted the remaining funds to the customer, thereby converting the funds. The complaint also alleges that Mize failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C07030072)

David Keith Rust (CRD #3256546, Registered Representative, Dallas, Texas) was named as a respondent in an NASD complaint alleging that he directed public customers to make withdrawals from their securities accounts in the form of checks totaling \$436,000, and instructed the customers to endorse the checks and give them to him to invest on their behalf. The complaint also alleges that Rust endorsed the customers' checks, thereby converting the funds to his own use and benefit without the customers' knowledge or consent. In addition, the complaint alleges that Rust failed to respond to NASD requests for information and documentation. (NASD Case #C06030023)

Raghavan Sathianathan (CRD #1743692, Registered Representative, Bloomfield, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended and effected the purchase of mutual funds and index warrants in the accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customer in view of the dollar amount of the shares purchased, the nature of the recommended transactions, and the customers' financial situation, investment objectives, circumstances, and needs. The complaint alleges that the transactions were effected through the use of margin, which was unsuitable in view of the size and nature of the accounts, financial situation, and needs. In addition, the complaint alleges Sathianathan recommended that the customer use an unsuitable stock as margin collateral for the purchase of the class B shares that was not suitable for the customer in view of his financial situation, investment objectives, circumstances, and needs, and he received commissions due to the unsuitable recommendations. The complaint further alleges that Sathianathan, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud customers by making untrue statements of material facts or omitting material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. The complaint also alleges that Sathianathan, pursuant to verbal authority, exercised discretion in the account of a public customer, without having obtained prior written authorization from the customers and prior written acceptance of the account as discretionary by his member firm. (NASD Case #C9B030076)

Stephen Nicholas Thomas (CRD #3236045, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he received \$150 from public customers in payment of initial insurance premiums on life insurance policies and failed to remit the funds to his member firm, thereby converting the money for his own use and benefit or for the benefit of a third party. (NASD Case #C10030082)

Scott Emil Wiard (CRD #1509365, Registered Principal, Ypsilanti, Michigan) and James David Reisinger (CRD #1275258, Registered Principal, Dexter, Michigan) were named as respondents in an NASD complaint alleging that Wiard was unconditionally prohibited from maintaining discretionary customer accounts, but individually, and through a registered investment adviser, continued to maintain and exercise discretion over customer accounts. The complaint alleges that Wiard and Reisinger engaged in unauthorized transactions in the accounts of public customers by fully investing customer assets in stock funds contrary to instructions and beyond the scope of authority granted by public customers. The complaint further alleges that Wiard and Reisinger recommended and engaged in purchase and sale transactions in the accounts of public customers without reasonable grounds for believing that the recommendations and resultant transactions were suitable for each of the customers on the basis of their age, net worth, financial situation, investment objectives, and needs. Furthermore, the complaint alleges that respondents created and distributed a brochure that touted the market-timing program they developed, and failed to obtain approval by signature or initial by a registered principal of their member firm prior to the use of the brochure, nor was the material sent to NASD Advertising Regulation for review and approval within 10 days of first use.

The complaint also alleges that the brochure omitted material information necessary to provide a sound basis for evaluating the facts regarding an investment system. The complaint further alleges that Wiard and Reisinger produced and distributed a letter that was deficient in the following respects: material disclosure; the NASD member firm name was placed in a legend on the last page of the letter; the letter, which names a non-member entity in addition to the member firm, failed to make it clear that securities are offered through the firm; and the material was not approved prior to use by a registered principal of the firm. The complaint further alleges that Wiard failed to amend his Form U4 to reflect the receipt of customer complaints. (NASD Case #C8A030078)

Terry Michael Laymon (CRD #304342, Registered Principal, Harper Woods, Michigan) was named as a respondent in an NASD complaint alleging that he retained ownership and control of a member firm and associated with the firm in a principal capacity while he was subject to a disqualification. The complaint also alleges that Laymon intentionally, recklessly, or negligently created false account statements with incorrect or inflated valuations to induce a public customer to continue to maintain accounts with Laymon's member firm. The complaint further alleges that a member firm, acting through Laymon, failed to qualify and register as a person associated with the firm, a financial and operations principal, or an introducing broker/dealer financial and operations principal. In addition, the

complaint alleges that Laymon performed duties as a general security principal while his registration status with NASD was inactive due to failure to timely complete the Regulatory Element of NASD's Continuing Education Rule. Furthermore, the complaint alleges that Laymon failed to timely file Rule 3070 reports disclosing reportable events. The complaint also alleges that a member firm, acting through Laymon, failed to timely amend the firm's Form BD and Laymon's Form U4 to report disciplinary actions. In addition, the complaint alleges that Laymon, acting through the firm, failed to timely amend his Form U4 to report disciplinary actions, and failed to respond completely and timely to NASD requests for information and documents. (NASD Case #C8A030081)

Firms Suspended for Failure to Supply Financial Information

The following firms were suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 8221. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Blue Marble Financial, LLC
Irving, Texas (October 2, 2003)

Hopewell Capital Group, Inc.
Montvale, New Jersey (October 14, 2003)

Firm Suspended for Failure to Pay Arbitration Fees Pursuant to NASD Rule 9531

Indianapolis Securities, Inc.
Valley Stream, New York (November 4, 2003)

Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210.

(The date the bar became effective is listed after the entry.)

Angelou, Morris,
Rego Park, New York (October 17, 2003)

Spear, James B.
Evansville, Indiana (October 3, 2003)

Kiggins, Warren D.
Phoenix, Arizona (September 17, 2003)

Stewart, Stephen R.
Cary, North Carolina (October 6, 2003)

Pagano, Brian Joseph
West Islip, New York (October 17, 2003)

Tanner, Jr., Thomas
Hartselle, Alabama (October 20, 2003)

Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Ceparano, Louis C.
Melville, New York (October 22, 2003)

Millard, John L.
Jupiter, Florida (October 6, 2003)

Chenhall, Terry
St. Petersburg Beach, Florida (October 6, 2003)

Mongie, Francis
Provo, Utah (October 10, 2003)

Everin, Peggy Louise
Wyoming, Michigan (October 17, 2003)

Ricciardi, Jr., Elio
Staten Island, New York (October 17, 2003)

Lyster, Charles E.
San Clemente, California (October 13, 2003)

Stabile, Bach R.
Sherman Oaks, California (October 17, 2003)

McMaster, Samuel
Albuquerque, New Mexico (September 17, 2003)

Wegesser, Hans
Menomonee Falls, Wisconsin (October 17, 2003)

Individual Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Hobika, Matthew,
Boston, Massachusetts (October 23, 2003)

Masel, Patricia,
North Babylon, New York (October 15, 2003 – October 20, 2003)

NASD Charges Morgan Stanley with Giving Preferential Treatment to Certain Mutual Funds in Exchange for Brokerage Commission Payments

NASD announced that it sanctioned Morgan Stanley DW Inc., for giving preferential treatment to certain mutual fund companies in return for millions of dollars in brokerage commissions. This is the second action brought by NASD against the firm for mutual fund violations in the last two months and is part of NASD's broader effort to crack down on sales practice abuses in this area. In conjunction with a related action filed by the Securities and Exchange Commission (SEC), Morgan Stanley agreed to resolve the NASD and SEC actions by paying \$50 million in civil penalties and surrendered profits.

From January 2000 until this year, Morgan Stanley operated two programs—the Asset Retention Program and the Partners Program—in which it gave favorable treatment to products offered by as many as 16 mutual fund companies out of a total of more than 115 fund complexes that could be sold by the firm's sales force. In return for these brokerage commissions and other payments, mutual fund companies received preferential treatment by Morgan Stanley, which included:

Placement on a "preferred list" of funds that financial advisors were to look to first in making recommendations of fund products;

Higher visibility on Morgan Stanley's sales systems and workstations than non-paying funds;

Eligibility to participate in the firm's 401(k) programs and to offer offshore fund products to Morgan Stanley customers;

Better access to its sales force and branch managers; and

Payment of special sales incentives to Morgan Stanley financial advisors.

In addition, the participating mutual fund companies paid Morgan Stanley an extra 15 to 20 basis points on each sale. This was over and above the normal fees earned by the firm for selling the funds.

This extra compensation paid to Morgan Stanley for the preferential treatment included millions of dollars paid by the mutual funds through commissions charged by the firm for trades it executed for the funds. These commissions were sufficiently large to pay for the special treatment, as well as the costs of trade execution. This conduct violates NASD's "Anti-Reciprocal Rule," Conduct Rule 2830(k), which prohibits members from favoring the distribution of shares of particular mutual funds on the basis of brokerage commissions to be paid by the mutual fund companies, as well as allowing sales personnel to share in directed brokerage commissions. One important purpose of the rule is to help eliminate conflicts of interest in the sale of mutual funds.

"More than 95 million investors in this country depend on mutual funds as their entryway into our securities markets. Investors expect and are entitled to informed, objective, and untainted recommendations from their brokers and their firms when it comes to which mutual funds to buy," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "Today's enforcement actions send a clear message that those who choose to embrace commissions, higher payouts, and extra bonuses over their duty to render conflict-free advice to their customers will be sanctioned in the strongest of terms."

In September of this year, Morgan Stanley DW was censured and fined \$2 million by NASD for conducting prohibited sales contests for its brokers and managers to promote the sale of its own mutual funds (see related news release at http://www.nasdr.com/news/pr2003/release_03_039.html).